

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 368 OF 2017
WITH
ORIGINAL APPLICATION NO. 369 OF 2017**

1. ORIGINAL APPLICATION NO. 368 OF 2017

DISTRICT : PARBHANI

Bapu Ramrao Lad,)
Age : about 53 years, Occu. : Service,)
R/o : Post Colony, Old Pedgaon Road,)
Parbhani, Tha. and Dist. Parbhani.)

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APPLICANT

V E R S U S

1. **The State of Maharashtra,**)
Through Secretary,)
Home Department, Mumbai.)

2. **Special Director General of Police (Establishment)**
State of Maharashtra, Shahid Bhagat)
Sing Marg, Kulaba, Mumbai.)

3. **Superintendent of Police,**)
Parbhani, Tah. and Dist. Parbhani.)

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RESPONDENTS

W I T H

2. ORIGINAL APPLICATION NO. 368 OF 2017

DISTRICT : PARBHANI

Rajendra Gangadharrao Jukte,)
Age : about 50 years, Occu. : Service,)
R/o : Amay Nagar, Parbhani,)
Tha. And Dist. Parbhani.)

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APPLICANT

V E R S U S

1. **The State of Maharashtra,**)
Through Secretary,)
Home Department, Mumbai.)

2. **Special Director General of Police (Establishment)**
State of Maharashtra, Shahid Bhagat)
Sing Marg, Kulaba, Mumbai.)
3. **Superintendent of Police,**)
Parbhani, Tah. and Dist. Parbhani.)

.. **RESPONDENTS**

APPEARANCE : Shri Swapnil Deshmukh, Advocate for the
Applicants in both the O.As.

: Shri V.R. Bhumkar, Presenting Officer for
Respondents in both the O.As.

CORAM : **Justice Shri P.R. Bora, Member (J)**
and
Shri Bijay Kumar, Member (A)

DATE : **23.03.2022.**

O R D E R

(Per : Shri Bijay Kumar, Member (A))

1. We are disposing of both the Original Applications by a common order, as the facts and issues involved in both the matters are similar and identical and deciding them by a common order may not prejudice any of the parties.

2. Original Application No. 368 of 2017 has been filed by one Shri Bapu Ramrao Lad, R/o Parbhani on 10.04.2017 invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985 challenging the order passed by the respondent No. 2 i.e.

the Special Director General of Police (Establishment), Maharashtra State vide order न्यायालयीन प्रकरण, क्र. पोमसं/५/१०/अर्हता-२०१३ /२६४/२०१३, पोलीस महासंचालक यांचे कार्यालय, मुंबई, दिनांक २४.०३.२०१७.

3. Original Application No. 369 of 2017 has also been filed by one Shri Rajeshwar Gangadharrao Jukte on 10.04.2017 invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985 challenging the order passed by the respondent No. 2 i.e. the Special Director General of Police (Establishment), Maharashtra State vide order न्यायालयीन प्रकरण, क्र. पोमसं/५/१०/अर्हता-२०१३ /२६४/२०१३, पोलीस महासंचालक यांचे कार्यालय, मुंबई, दिनांक २४.०३.२०१७.

4. The two O.As. were allowed to be amended vide the Tribunal's order dated 03.05.2017 passed in M.A. No. 171/2017 in O.A. No. 368/2017 and M.A. No. 172/2017 in O.A. No. 369/2017, by which prayer clause 7(I-A) and 7(II-A) were added. *However, copy of the impugned order dated 27.04.2017 has not been produced on record by the applicants.*

5. The original applicants have claimed that they had been working as 'Assistant Sub-Inspector of Police' in the year 2013. During the year, the respondent No. 2 had undertaken process of promoting Assistant Sub-Inspector of Police to the post of Police Sub-Inspector under the promotion quota by conducting

promotional examination-2013. The candidates from multiple feeder-cadres namely, Police Constable or Police Naik or Police Hawaldar or Assistant Police Sub-Inspector in the Police Force took the examination. Provisional results of the said examination were declared on 07.09.2013 and it was mentioned that the final result will be declared within 30 days after process of revaluation of answer script is completed. The two applicants were declared "Passed" in the provisional result. However, when the final results were declared on 24.10.2013, the two applicants were declared as "Failed".

6. Respondent No. 2 issued ad hoc promotion orders for a period of 11 months on 03.05.2014 in favour of the candidates declared as "Passed" as per provisional result of the said examination, which included the applicants in the O.A. No. 368 of 2017 and O.A. No. 369 of 2017. A corrigendum to the said ad hoc promotion order dated 31.12.2014 was issued by the respondent No. 2 for making 'ad hoc' promotion as 'Regular' promotion. The names of the two original applicants also figured in the said corrigendum. The respondents claim that operation of the said corrigendum was stayed on by an interim order of 'Status Quo' passed by Hon'ble High Court of Judicature at Bombay on 12.01.2015 in W.P. No. 8919/2014 filed by a

candidate and another W.P. No. 4078/2015 filed by the State of Maharashtra and interim order dated 05.02.2015 (Reference page No. 25 of O.A. No. 368/2017 and page No. 23 of the paper book). The respondents have further claimed that in view of interim stay, the Police Sub-Inspector appointed on ad-hoc basis were reappointed on ad-hoc basis by orders issued on 20.02.2015, 02.01.2016 and 25.11.2017.

7. It is admitted by the contesting parties that the promotion orders issued in favour of the original applicants were cancelled vide order passed on 24.03.2017 on the ground that the two applicants had been unsuccessful in the promotional examination-2013. In response to this the two applicants submitted their separate representations against the impugned order on 29.03.2017 and have subsequently, on exhausting alternative remedy available to them, filed the two original applications before this Tribunal.

8. Relief sought for by the applicants in the two Original Applications are similarly worded and identical as reproduced below in verbatim:-

“7. Relief Sought :

It is, therefore, most humbly prayed that this Hon'ble Tribunal may kindly be pleased to :

(i) *By appropriate writ, order or direction, quash and set aside the impugned order dated 24.03.2017 whereby the applicant is declared fail in the departmental examination and his promotion is cancelled.*

(I-A) *By appropriate order or direction quashed and set aside the impugned order dated 27.04.2017 issued by the respondent No. 3 AND*

(ii) *Stay the effect and operation of the impugned order dated 24.03.2017 during the pendency of the instant matter.*

(II-A) *Pending hearing and final disposal of the original application, operation, execution, implementation of impugned order dated 27.04.2017 issued by respondent No. 3 may kindly be stayed.*

(iii) *Grand ad-interim stay to prayer clause no. ii.*

(iv) *Direct the non-applicant No. 2 and 3 allow the applicant to work at the present place on the promoted post at Parbhani as Police Sub-Inspector during the pendency of the instant matter.*

(v) *Grant any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.*

**Note : The applicants have added prayer clause 7(I-A) and 7(II-A) by amendment, but not enclosed the copy of impugned order dated 27.04.2017.*

8. Interim relief :

That as prima facie the impugned order dated 24.03.2017 (Annexure A-6) is illegal, arbitrary and without

following the principles of law deserves to be stayed during the pendency of the instant matter. That if the stay is not granted, the non- applicant no. 2 and 3 as per the impugned order will take action and take away the promotional right from the applicant. That in view of the facts and circumstances of the matter, the effect and operation of impugned order dated 24.03.2017 is required to be stayed by way of an interim relief during the pendency of the instant matter.”

From records, it appears that no interim relief was granted by this Tribunal in these O.As.

9. **Pleadings**: - Affidavit in reply has been filed on behalf of respondent Nos. 2 and 3 on 10.01.2018. Rejoinder to the affidavit in reply was filed on behalf of the applicant on 14.08.2018. Sur-rejoinder was filed on behalf of respondent No. 2 and 3 on 15.12.2018, in response to which additional affidavit was filed on behalf of the applicant on 01.02.2019. The final hearing in the matter of the two O.A.s took place on 17.02.2022 and the matters were reserved for orders. The pleadings made by the two contesting sides may be summed up as follows :-

(a) The applicants have claimed that the impugned order has been issued without stating any reasons for declaring the applicants as unsuccessful in the Departmental

Examination of the year 2013. Further, no notice has been given by the respondent No. 2 to the applicants before passing impugned order, thereby, providing them opportunity to be heard, which amounts to violation of Principles of Natural Justice. The respondents have failed to take any corrective action in spite of submissions of representations to them.

(b) The respondents have contended that it is evident from the facts on record submitted by the applicants in the respective O.As. and so is undisputed position that the applicants had been declared as 'passed' in the Departmental Promotional Examination-2013 for which provisional results were declared on 07.09.2013 and it was mentioned at that time that final result will be declared within 30 days after process of revaluation of answer script is completed. Accordingly, final results were declared on 24.10.2013 in which the two applicants were declared as 'Failed'. The respondents have enclosed a copy of the said final result sheet at Page Nos. 47 and 48 of the paper book of O.A. No. 368/ 2017 and page Nos. 44 and 45 of paper book of O.A. No. 369/2017. It has been further clarified that as per the provision of applicable rules for promotional

exam, the candidates have to score minimum 45% marks in individual subject and 50% marks in aggregate. As the two applicants had failed to score 45% marks in paper 2 and scored 37 marks each out of total marks of 100, they were declared as "Failed". The exam rules known as "निशस्त्र पोलीस उपनिरीक्षकांची पदोन्नतीच्या वाटापाची २५% पदे पदोन्नतीने भरण्यासाठी विभागीय अर्हता परिक्षा नियमावली"- 2001 is in public domain, extract of Annexure-B of the said rule is at page Nos. 129 to 132 of the paper book of O.A. No. 368/2017 for ready reference, which state that "१३. परीक्षा उत्तीर्ण होण्यासाठी प्रत्येक विषयात किमान ४५% (पंचेवाळीस टक्के) गुण व एकत्रित ५०% (पन्नास टक्के) गुण प्राप्त करणे आवश्यक राहिल." These rules had been issued vide Home Department G.R. No. आरटीआर-०३०७/प्र. क. ७२५/पोल-५अ, मंत्रालय, मुंबई, दि. २१.०४.२००९. The respondents have also pointed out that the applicants have not challenged the revised result at any stage including while making submissions before this Tribunal.

(c) The applicants have also claimed that they were given ad-hoc promotion to the post of Police Sub-Inspector for a period of 11 months vide order dated 03.05.2014 (*copy of related appointed order has not been submitted by the applicants along with their submissions at any stage*). However a copy of Corrigendum to the same dated

31.12.2014 and bearing outward No. पोमसं/५/१०/अर्हता-२०१३/२६४ /२०१४, पोलीस महासंचालक यांचे कार्यालय, मुंबई, दिनांक ३१.१२.२०१४ has been enclosed at page No. 18 of the paper book in O.A. No. 368/2017 and page No. 17 of the paper book of O.A. No. 369/2017. Operating part of the said Corrigendum in Marathi is reproduced below for accuracy and ready reference:-

“-: शुध्दीपत्रक :-

उपरोक्त संदर्भातील नमूद आदेशामध्ये नमूद पोह/सपोउनि यांना “११ महिन्यांच्या कालावधीकरिता तात्पुरत्या / अभावित स्वरूपात पदोन्नती देण्यात येत आहे.” या वाक्याऐवजी त्यांना “त्या त्या आदेशाच्या तारखेपासून पोलीस उप निरिक्षक पदी स्थानापन्न प्रवर्गात उपलब्ध असलेल्या १९०७ रिक्त पदात देण्यांत आल्याचे समजण्यात यावे.”

(d) The applicants have further contended that though they had been declared as “Failed” by final result declared on 24.10.2013, they had reason to believe that they have been regularized by issue of Corrigendum dated 31.12.2014. In addition, the applicants have asserted that even if they had failed in promotional Examination, they deserve exemption from appearing in the said examination as both of them have already crossed the age of 45 years. In support of their clime of exemption, the applicants have cited the judgment of the Hon’ble High Court of Judicature

at Bombay, Bench at Aurangabad in W.P. No. 3643/2009, dated 21.11.2017 and W.P. No. 4078 of 2015 judgment dated 27.12.2016.

(e) The respondents, on the other hand have cited judgments of Hon'ble High Court of Judicature at Bombay Civil Appellate Jurisdiction in W.P. No. 8919/2014 together with W.P. no. 8843/2014 and W.P. No. 10877/2014, judgment dated 12.01.2015 and judgment of Hon'ble Apex Court in Special Leave to Appeal (C) No. (s) 2934-3935/2017 (arising out of impugned final judgment and order dated 20.12.2016 in W.P. No. 4078/2015, 21/12/2016 in W.P. No. 4078/2015, 20/12/2016 in WP No. 8843/2014, 21/12/2016 in WP No. 8843/2014 passed by the High Court of Bombay), order dated 23.02.2017.

(f) During the arguments the learned Presenting Officer had been asked to explain delay of about three years in issuing order of cancellation of promotion of the applicants vide order न्यायालयीन प्रकरण, क. पोमसं/५/१०/अर्हता-२०१३ /२६४/२०१३, पोलीस महासंचालक यांचे कार्यालय, मुंबई, दिनांक २४.०३.२०१७. The learned P.O. has explained the delay in issuing the said order by citing order of the Principle Bench of this Tribunal at Mumbai in O.A.

No. 767/2013 and 284/2014, dated 09.07.2014, by which the Tribunal was pleased to quash and set aside the G.R. dated 29.06.2013 amending the Police Sub-Inspector Recruitment Rules, 1995. Thereafter, one affected candidate had filed W.P. No. 8919/2014. Even State Government had filed W.P. No. 4078/2015. Hon'ble High Court had passed interim order dated 12.01.2015, by which issuance of the order dated 31.12.2014, which was in the form of Corrigendum to the appointment order to the candidate appointed on ad-hoc basis was stayed. The respondents have further mentioned in para No. 4 of the impugned order that the Police Sub-Inspector appointed on ad-hoc basis remained as appointed on ad-hoc basis by orders issued on 20.02.2015, 02.01.2016 and 25.11.2017. Finally, the Hon'ble High Court of Judicature at Bombay Civil Appellate Jurisdiction dismissed the W.P. No. 8919/2014, 10877/2014 and 8843/2014 filed by the candidates and allowed W.P. No. 4078/2015 filed by the State Government. It is after the judgment passed by the Hon'ble High Court that the impugned orders could be passed.

10. **Analysis of Facts** :- Upon analysis of facts on record and oral submissions made by the contesting parties, in the present two Original Applications, following facts emerge :-

(a) According to final result, the applicants were declared as “Failed”, this fact has not been disputed by the applicants. The final results are as per rules laid down in this regard by the Home Department G.R. dated 21.04.2001 and therefore, are in order.

(b) The applicants continued on ad-hoc promotion for a long time from the year 2014 to 2017, the reason has been well explained by the respondents, which has not been contested by the applicants.

(c) As there are multiple cadre as feeder cadre for post of Sub-Inspector under promotion quota, holding of promotional examination is the proper procedure for selection of candidates for promotion. The Rule 3(a) of Police Sub-Inspector (Recruitment) (Amendment) Rules, 2013 and related circular and the policy decision, an upheld by the Hon’ble High Court as in accordance with law while deciding Writ Petition cited by the respondents

and confirmed by the Hon'ble Apex Court also discussed in preceding para No. 10(e).

(d) Claims of applicants regarding applicability of rules of exemption from passing the departmental examination upon attaining age of 45 years has not been an issue of relevance in the process of conduct of promotional examination and does not relate to impugned orders therefore, is not a subject matter of adjudication in the present cases. However, the applicants are at liberty to take it up at appropriate forum first.

(e) Likewise, the applicant in O.A. No. 368/2017 has not been able to cite any provision of rules / administrative order which entitles him of any special treatment such as granting of grace marks, granting extra time for written test, reservation in promotion etc., as claimed by him on ground of being physically handicapped; therefore, the same does not hold good in the present matter.

(f) It is evident on face of record that the respondents ought not have issued even ad hoc promotion orders in favour of the applicants after they were declared as "failed" as per the final result. Further, their name ought not to have appeared in the Corrigendum dated 31.12.2014.

These developments indicate towards need of fixing responsibility on concerned employee in the office of respondent No. 2 for corrupting the process of promotion by creating legal complications in favour of candidates not eligible for promotion.

11. **Conclusion**: - In our considered opinion, there is no merit in the Original Applications and therefore, following order is being passed:-

ORDER

- (A) Original Applications Nos. 368 and 369, both of 2017 are, hereby, dismissed for being devoid of merit.
- (B) Respondents are directed to fix responsibility as per provisions of Conduct Rules and Discipline & Appeal Rules, on concerned employees for their lapses in carrying out scrutiny of related records and thereby, proposing ad-hoc promotion orders in favour of the applicants and other candidates, if any, who had “failed” in the promotional examination in the present matter and also incorporating names of failed candidates in the Corrigendum dated 31.12.2014.
- (C) No order as to costs.

MEMBER (A)

MEMBER (J)